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	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
ν-	10/509,770	09/28/2004	Michael Philip Cohen	34251-502 NATL.	2138	
	30623 7590 09/20/2007 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY			EXAMINER		
	AND POPEO, P.C. ONE FINANCIAL CENTER BOSTON, MA 02111			CHANG, CELIA C		
			•	ART UNIT	PAPER NUMBER	
	,				1625	
				MAIL DATE	DELIVERY MODE	
				09/20/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)			
	10/509,770	COHEN ET AL.			
Office Action Summary	Examiner	Art Unit			
	Celia Chang	1625			
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the c	correspondence address			
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING D. - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period of Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tir will apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDONE	N. nely filed the mailing date of this communication. ED (35 U.S.C. § 133).			
Status					
1) Responsive to communication(s) filed on 23 Ju	Responsive to communication(s) filed on 23 July 2007.				
<i>′</i> =	, 				
	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is				
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4) ⊠ Claim(s) 1-7,9-14 and 27-58 is/are pending in 4a) Of the above claim(s) 9-14 and 27-45 is/are 5) □ Claim(s) is/are allowed. 6) ⊠ Claim(s) 1-7, 46-58 is/are rejected. 7) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/or	e withdrawn from consideration.				
Application Papers					
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) accomposed and applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Example 11.	epted or b) objected to by the drawing(s) be held in abeyance. Se tion is required if the drawing(s) is ob	e 37 CFR 1.85(a). njected to. See 37 CFR 1.121(d).			
Priority under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
Attachment(s)					
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail D 5) Notice of Informal F 6) Other:	ate			

Application/Control Number: 10/509,770

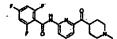
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DETAILED ACTION

1. Applicant's election without traverse of Group I, claims 1-7, 46-58 in the reply filed on July 23, 2007 is acknowledged.

The species of election is



Claims 8 and 15-26 has been canceled. Claims 9-14, 27-45 have been withdrawn from consideration per 37 CFR 1.142(b).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7, 46-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Krushinski et al. US 6,777,428 in view of King.

Determination of the scope and content of the prior art (MPEP §2141.01)

Krushinski et al. '428 disclosed structural analogous compounds for the same utility of 5HT1f receptor activity. A specific compound analogous to the instantly elected species is disclosed at col. 46, lines 63-65, compound 64.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the prior art compound is that the prior art compound used a phenyl piperidine keton core while the instant claims are drawn to compounds having pyridinyl

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piperidine keton core. King taught that bioisosteric replacement of moieties is a prima facie obvious modification of a drug since bioisosteric design is conventionally known to produce active compounds without affecting the biochemical binding ability.

Finding of prima facie obviousness—rational and motivation (MPEP§2142-2143)

One having ordinary skill in the art in possession of the above references would be motivated to modify the known compound with a bioisosteric replacement because such modification is well within the skill of conventional chemical technique with an anticipated success predicted by the design choice of functional equivalent ring systems (see King p.208 table 1 benzene vs pyridine rings). The modification of a proven compound with conventional skill which is expected to produce similar activity consistent with the expectation of the intended modification is prima facie obvious.

3. Claims 1-7, 46-58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,777,428 alone or in view of Blanco et al. US 20060211734 claims 1-8.

The same rational as delineated supra in section 2 is also applicable here. The broadened scope of R3 being pyrazole is also an art recognized teaching of the copending 20060211734.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celia Chang, Ph. D. whose telephone number is 571-272-0679. The examiner can normally be reached on Monday through Thursday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet L. Andres, Ph. D., can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OACS/Chang Sept. 18, 2007 Celia Chang Primary Examiner Art Unit 1625